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EXAMINER	
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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/632,140
Filing Date: August 03, 2000
Appellant(s): HOFFMAN, ROGER P.

Philip M. Weiss
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 16, 2004.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 1 – 4 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

5,057,359	Merdem et al.	10-1991
5,002,186	Cooper	3-1991
4,128,169	Arneson	12-1978

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1 – 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Merdem et al (U.S. Patent No. 5,057,359) in view of Cooper (U.S. Patent No. 5,002,186) and further in view of Arneson (U.S. Patent No. 4,128,169).

With regard to Claim 1, Merdem et al. disclose a laminated carton (column 3, lines 16 – 40) comprising a box (carton; column 3, lines 16 – 40) comprising a folded, secured composite sheet (laminate; column 3, lines 16 – 40); the sheet comprises a layer of unbleached paperboard (therefore a layer of unbleached cellulosic fibers; column 3, lines 16 – 57) having an inner surface and outer surface (paperboard; column 3, lines 16 – 40), an outer layer of greaseproof

paper (therefore a separately formed paper having an inner surface and outer surface; column 3, lines 16 – 40), and adhesive between the inner surface of the outer layer and the outer surface of the inner layer, and serving to bond the outer layer to the inner layer (the adhesive comprises polyolefin layers; column 3, lines 16 – 40); polyolefin layers are also laminated to the inner surface of the inner layer and outer surface of the outer layer (column 3, lines 49 – 67). With regard to the claimed aspect of the paper layers being 'uncorrugated,' Merdem et al do not disclose corrugation; the claimed aspect of the paper layers being 'uncorrugated' therefore reads on Merdem et al. Merdem et al fail to disclose a carton which is a beverage carrier and a layer having printed graphics disposed on its outer surface.

Cooper teaches that it is well – known in the art to use a paperboard carton as a beverage carrier, for the purpose of obtaining a container which holds beverage containers tightly (column 1, lines 10 – 24). The desirability of providing for a paperboard carton which is a beverage carrier in Merdem et al, which is a carton, would therefore be obvious to one of ordinary skill in the art.

Arneson teaches that it is well – known in the art to print the outer surface of a beverage carrier, for the purpose of displaying instructions regarding the containers (column 5, lines 42 – 52).

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for the use of the paperboard carton as a beverage carrier in Merdem et al in order to obtain a container which holds beverage containers tightly as taught by Cooper and to have provided for a beverage container having a printed outer surface in order to display instructions regarding the containers as taught by Arneson.

With regard to Claim 2, Merdem et al disclose the use of unbleached Kraft paper as the material of the paperboard (column 3, lines 49 – 58); the claimed aspect of the Kraft paper comprising 'unbleached virgin Kraft pulp' therefore reads on Merdem et al.

With regard to Claim 3, the beverage carrier further comprises a layer of water absorbent material (air) disposed on the inner surface of the inner layer.

With regard to Claim 4, the beverage carrier comprises a film of water resistant adhesive (the innermost polyolefin layer) bonding the absorbent material to the base layer.

(11) Response to Argument

Appellant argues that Merdem et al does not teach a laminated beverage carrier; Merdem et al, Appellant argues, is a beverage container that holds fruit juice, or liquids, not beverage cans.

However, the phrase 'for beverage containers' in Claim 1 constitutes an intended use, and is therefore given little patentable weight. Furthermore, Merdem et al is not limited to a juice container; Merdem et al disclose a carton blank, especially for use in containers for food or juice (column 1, lines 5 – 11), and as stated in the rejection, Cooper teaches that it is well – known in the art to use a paperboard carton as a beverage carrier, for the purpose of obtaining a container which holds beverage containers tightly (column 1, lines 10 – 24). The desirability of providing for a paperboard carton which is a beverage carrier in Merdem et al, which is a carton, would therefore be obvious to one of ordinary skill in the art.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for the use of the paperboard carton as a

beverage carrier in Merdem et al in order to obtain a container which holds beverage containers tightly as taught by Cooper.

Appellant also argues that the outer layer of Merdem et al is not a non – corrugated paper layer.

However, Merdem et al disclose a layer of paper (greaseproof paper, '2' in the Figure; column 3, lines 16 – 23) which is an outer layer as it is outside of the inner surface (the surface of the polyethylene layer '5' in the Figure; column 3, lines 30 – 32). Merdem et al does not teach that the layer is corrugated, and does not indicate in the Figure that the layer is corrugated, therefore the claimed aspect of the layer being corrugated reads on Merdem et al.

Appellant also argues that Merdem et al does not disclose that there are printed graphics disposed on the outer surface of the paper.

However, Arneson teaches that it is well – known in the art to print the outer surface of a beverage carrier, for the purpose of displaying instructions regarding the containers (column 5, lines 42 – 52).

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made have provided for a beverage container having a printed outer surface in order to display instructions regarding the containers as taught by Arneson.

Appellant also argues that Merdem et al teach that the adhesive layers disclosed by Merdem et al may have dye pigments, which provide impermeability to light, and that the printing on the paper would therefore not be seen from the outside of the adhesive.

However, the term 'may' clearly indicates that the dye pigment is optional, and therefore would not necessarily prevent the viewing of printing depending on the desired use of the end product.

Appellant also argues that the invention of Merdem et al relates to an air – tight container, and that Merdem et al teach in column 5, lines 2 – 5 that a product placed in the carton blank of Merdem et al must be maintained in an oxygen free atmosphere; the beverage carriers of Cooper and Arneson are not air tight, Appellant argues, therefore there is no teaching to combine the references.

However, Merdem et al is not limited to an air – tight container; Merdem et al teach that the carton blank that is disclosed is useful in storing products that must be maintained in an oxygen free atmosphere, in column 5, lines 2 – 5, but does not state that the blank is necessarily used in an air – tight container.

Appellant also argues that Merdem et al would teach away from a layer that comprises a water absorbent material disposed on the inner surface of the base layer because Merdem et al would not want the inner layer to absorb the contents of the container; Merdem et al disclose an adhesive as the final inner layer, Appellant argues, for the purpose of keeping the liquid away from the outer layers of Merdem et al.

However, Merdem et al do not teach that it is undesirable to have a layer absorb the contents of a container comprising the carton blank. Furthermore, the layer that is disposed on the inner surface of the base layer is a layer of paper (column 3, lines 16 – 23); the layer is therefore water – absorbent; because the container of Merdem et al is not necessarily an air – tight container, as stated above, the container also contains air, which contains water vapor and is

therefore also water – absorbent. Merdem et al also do not teach that the disclosed polyolefin layers are provided for the purpose of keeping liquid away from the other layers of the laminate.

Appellant also argues that for the reasons stated above, Claims 2 – 4 are also not obvious over Merdem et al in view of Cooper and Arneson. In response, the answers above are repeated.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,
Marc Patterson

November 15, 2004

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11/15/04

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